

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 24, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 24, 2023, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

Call to Order	The Invocation and Pledge of Allegiance were led by Mr. Vincent. Mr. Vincent called the meeting to order.
M 033 23 Approve Agenda	A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to approve the Agenda, as presented. Motion Adopted: 5 Yeas Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea
Minutes	The minutes from January 10, 2023, were approved by consensus.
Corre- spondence	There was no correspondence. Public comments were heard, and the following people spoke:
Public Comments	Ms. Jill Hicks spoke about growth, traffic, and healthcare issues in Sussex County. In addition, she spoke about the recent denial of the Future Land Use Map Amendment along Route 1. Ms. Maggie McLaughlin spoke about the recent denial of the Future Land Use Map Amendment along Route 1.
Rules Procedure Review	of Mr. Lawson led a discussion of Rules of Procedures related to Tributes, Resolutions & Proclamations. Mr. Lawson provided background related to the documents of recognition issued by the County Council. The three forms of documents include Resolutions, Proclamations and Tributes. By Code, Resolutions are akin to Ordinances and require review and approval

Rules of Procedure Review (continued) by a vote of the County Council. Unlike Ordinances, Resolutions do not require a public hearing. Alternatively, Proclamations and Tributes are often issued by the Council in recognition of exemplary services or a momentous occasion. Proclamations and Tributes do not trigger Council review and approval, however, rarely is the entire Council aware of the issuance of a Proclamation and Tribute.

The amendment to the current Rules aims to address this potential issue.

In previous Rules of Procedure, the steps to approve and issue a County Council Proclamation were listed in the Rules at Rule 11. However, references to Proclamations were removed from Rule 11 in 2017 to reflect County's practices at that time.

In this updated version, a new Rule – Rule 11A was added to keep the process for issuing Proclamations and Tributes separate from Resolutions. As provided, Rule 11A is very similar to Rule 11.

Mr. Lawson explained that the intent is to have all requests for Proclamations and Tributes be submitted in writing and staff will then circulate the request to the entire County Council. Should a Member wish to have the request reviewed during a County Council meeting, the Member will ask to have the request placed on a future agenda. At that point, the Council will review and approve or disapprove of the Proclamation or Tribute. If no Member requests to have the Proclamation or Tribute placed on an agenda, the document will be processed and issued accordingly.

A new future in Rule 11.3A includes a reference to a unique numeric series for all Proclamations and Tributes to identify the document and its content.

Mr. Vincent commented that he requested for this item to be placed on the agenda. He has done some research; however, he is not done with that research at this time. Therefore, he would like to request to have this item deferred until he completes his research.

Mr. Rieley asked if this would have any impact on a Council Member writing a letter on County letterhead. Mr. Lawson replied that the Rules of Procedures as currently written do not reference letters from County Council Members.

M 034 23
Defer
Action/ A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to defer action.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

**Administrator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, The Vineyards at Nassau Valley – Phase 3 (Plan Review) and Friendship Creek – Phase 1C (PS&FM Construction Record) received Substantial Completion January 9th and January 11th respectively.

[Attachments to the Administrator's Report are not attached to the minutes.]

**2022 Mass
Annexation
Request**

John Ashman, Director of Utility Planning and Design Review presented the 2022 Mass Annexation Request for Council's consideration. Mr. Ashman reported that under the authority of the County Engineer, the Engineering Department has been accepting annexation fees and connecting individual parcels on an as-needed basis. The County Engineer may grant connections to scattered parcels at the EDU density of the abutting property but cannot exceed 12 EDUs per acre, parcels must be able to become contiguous. The connection must be evaluated and determined to not overload capacity in the existing infrastructure. The department is submitting a list of parcels as an all-encompassing annexation for those parcels previously requesting, paying the appropriate annexation fee, and meeting the previously stated requirements. The parcels are: 234-12.00-212.00, 234-12.00-211.00, 234-12.00-210.00 and 134-7.00-118.00. The Engineering Department is requesting permission to adjust the Sewer Tier maps to reflect the addition of these parcels.

**M 035 23
Approve
2022 Mass
Annexation
Request**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department that the Sussex County Council approves the Mass Annexation as presented and gives permission to adjust the sewer tier maps accordingly.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Amendment
No. 6/
Winding
Creek
Village**

Hans Medlarz, County Engineer presented Amendment No. 6 for the Winding Creek Village Water Design for the Herring Creek Sanitary Sewer District for Council's consideration. The Engineering Department is requesting issuance of this amendment for the final design, construction administration and inspection services.

M 036 23
Approve
Amend. No.
6 Winding
Creek
Village

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 6 to the EJCDC base engineering contract for the Herring Creek Sanitary Sewer District with Whitman, Requardt and Associates be approved in the amount not to exceed \$370,287.00, for the final design, construction administration and inspection services for the Winding Creek Village Water District.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Old
Business/
CU2329

Under Old Business, Jamie Whitehouse, Planning and Zoning Director discussed a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT RESTORATION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.20 ACRES, MORE OR LESS” filed on behalf of Thomas Drgon Trustee.

Mr. Whitehouse reminded Council that a public hearing was held during their meeting of January 10, 2023. At the conclusion of the Public Hearing, a Motion was made and passed to defer action on the application for further consideration.

M 037 23
Adopt
CU2329/
DENIED

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT RESTORATION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.20 ACRES, MORE OR LESS”.

Motion Denied: 4 Nays, 1 Yea

Vote by Roll Call: Mrs. Green, Nay; Mr. Schaeffer, Nay;
Mr. Hudson, Nay; Mr. Rieley, Yea;
Mr. Vincent, Nay

Old
Business/
CZ1969

Under Old Business, Jamie Whitehouse, Planning and Zoning Director discussed a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIALDISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS” filed on behalf of Ron Sutton.

Mr. Whitehouse reminded Council that a Public Hearing on the application during their meeting of January 10, 2023. At the conclusion of the Public Hearing, a Motion was made and passed to defer action on the application for further consideration.

**M 038 23
Defer
Action/
CZ1969**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU2339**

Under Old Business, Jamie Whitehouse, Planning and Zoning Director discussed a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (60 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS” filed on behalf of Ron Sutton.

Mr. Whitehouse reminded Council that a Public Hearing on the application during their meeting of January 10, 2023. At the conclusion of the Public Hearing, a Motion was made and passed to defer action on the application for further application.

**M 039 23
Defer
Action/
CU2339**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (60 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Grant
Requests**

Mrs. Jennings presented grant requests for Council’s consideration.

M 040 23
Manufactured Home Owners Association
A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to give \$1,500.00 (\$500.00 from Mr. Schaeffer's Councilmanic Grant Account, \$500 from Mr. Hudson's Councilmanic Grant Account and \$500 from Mr. Vincent's Councilmanic Grant Account) to Delaware Manufactured Home Owners Association for their Educating and Aiding Manufactured Owners program.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 041 23
**Race4warr-
iors**
A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to give \$2,000 (\$400 from each Councilmanic Grant Account) to Race4warriors for their Race4warriors event.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 042 23
Nicmar Youth Connection Enterprises, Inc.
A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$1,000 (\$1,000 from Mrs. Green's Councilmanic Grant Account) to Nicmar Youth Connection Enterprises, Inc. for their Eastern Shore Alumni Basketball Classic.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Introduction of Proposed Ordinances
Mr. Schaeffer introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A YEAR-ROUND FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.12 ACRES MORE OR LESS"

The Proposed Ordinance will be advertised for Public Hearings.

Council Member Comments

There were no Council Member comments.

M 043 23
Recess
At 10:33 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess until 1:30 p.m. Public Hearings.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 044 23 At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to
Reconvene reconvene.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Rules Mr. Moore read the rules and procedures for public hearings.

**Public Hearing/
CU2336** A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.012 ACRES, MORE OR LESS" (property lying on the north side of Woodland Ferry Road [S.C.R. 78] 0.15 mile east of the intersection of Woodland Ferry Road [S.C.R. 78] and Bethel Road [S.C.R. 493] and on the east side of Bethel Road [S.C.R. 493] 0.2 mile north of the intersection of Woodland Ferry Road [S.C.R. 78] and Bethel Road [S.C.R. 493]) (911 Address: N/A) (Tax Parcel: 232-5.00-11.03 [p/o]) filed on behalf of Community Power Group, LLC

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 17, 2022. At the meeting of December 15, 2022, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 10 recommended conditions as outlined.

The Council found that Mr. Michael Borkowski, President of Community Power Group, LLC spoke on behalf of the Application; that Community Power Group, LLC is a very experienced group; that they are focused in the mid-Atlantic area; that the company uses domestic equipment, pollinator friendly ground covers and game fences when possible; that the land owner owns a lot of land in the area; that the proposed area was picked because the electrical infrastructure was available; that it was felt that it could be kept off of the roadway; that there is no request for any exemptions or exceptions; that that they did make recent revisions to the site plan; that they added double layered buffers in certain areas; that the extended buffering in other areas; that there were neighbors located to the

**Public
Hearing/
CU2336
(continued)**

north who expressed concerns regarding buffering; that they had not proposed buffer in the area, as there was a robust buffer already in existence; that due to this and the concern of the owner, they added landscaping to that area; that the Application meets and/or exceeds all zoning requirements of the County; that they proposed to use polycrystalline panels; that thin-film panels do contain Cadmium in them; that polycrystalline panels have no adverse chemicals in them; that they will use Single Axis Trackers (SAT) racking system; that Community Power Group did submit FAA approved glare studies; that they did submit noise studies; that they propose pollinator-friendly ground cover for the site; that they propose game fencing to surround the site; that a decommissioning plan was submitted; that this will be a community solar farm; that the energy will be sold back to the community; that there is a meter placed, which spins backward; that the solar farm will receive a negative invoice; that subscribers will subscribe to the farm; that if a person's electric bill is \$300, they will subscribe to the farm for \$300 worth of credits; that Community Power Group will obtain the persons meter number and will allocate the credits to the meter; that questions have been asked about what solar farms do to property values; that Cohenreznick did a study on property values near solar projects and the study found there was no negative impact on property values near solar farms; that property values can also be verified on Zillow.com.

There were no public comments.

The Public Hearing and public record were closed.

**M 045 23
Defer
Action/
CU2336**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.012 ACRES, MORE OR LESS".

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU2325**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 30.76 ACRES MORE OR LESS" (property lying on the northeast side of Jay Patch Road [S.C.R. 376A], approximately 0.5-mile southeast of Pepper Road [S.C.R. 376]) (911 Address: N/A) (Tax Parcel: 533-9.00-58.00) filed on

**Public
Hearing/
CU2325
(continued)**

behalf of David & Sandra Blank

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 17, 2022. At the meeting of December 8, 2022, the Planning & Zoning Commission recommended approval of the application for the 3 reasons stated and subject to the 14 recommended conditions as outlined.

The Council found that Mr. David Blank and Ms. Sandra Blank spoke on behalf of their Application; that the record from the previously Public Hearing was well documented; that he will let that summary of the record explain most of the purpose of the project; that the idea for the campground came to them from Planning and Zoning; that his work in India led to a breakthrough, which led him to Sussex County; that at the same time, they purchased their property along Jay Patch Rd., with the intention of placing a single-family home on the property; that the technology they are attempting to pioneer will benefit the planet; that since the first public hearing, two approvals have been obtained; that one is from the Sussex Conservation District; that the other approval is from the Fire Marshall.

Mr. Hudson questioned if two units could go onto one septic system. Mr. Blank replied that a campground managers residence has also been requested to be located on the campground which would be a single-family home. The septic would be located at that residence and that the other units would be connected to that system. It is estimated within 2 to 3 years the project would start.

Mr. Schaeffer questioned Condition N proposed by the Planning and Zoning Commission. Mr. Whitehouse noted that it can be modified if desired.

Public comments were heard.

Mr. Mark Meckes spoke in opposition of the application; that he is currently building a home across the street from the proposed project; that at the previous public hearing, many people spoke in opposition of the application; that it was originally proposed as a campground; that now the applicant's are stating it is for personal use; that he has concerns about the septic system; that traffic is a concern; that he questioned if there could be a time limit of how long the campers could be there; that you do not see campers on land of this size indefinitely; that it is a dead end road; that Jay Patch Road is not wide enough to pass two cars coming in and going; that if the campers are permanent you would not have that traffic.

Ms. Karen Tyre spoke in opposition of the application; that she is a property owner near the proposed property; that she sent it a letter dated

**Public
Hearing/
CU2325
(continued)**

November 15, 2022 that stated her reasons of opposition; that the letter was provided to the Council members in an email yesterday; that she has concerns that the campground will create an increase in foot and vehicle traffic; that she has concerns about the wetlands; that the road has no shoulder and is very narrow; that the proposed campground would bring a party type activity to a quiet neighborhood; that there does not seem to be acceptable water and septic to accommodate the campground; that it would adversely affect property values; that this is a farming area with no commercial activity; that she questioned what type of septic system will service the campground.

The Public Hearing and public record were closed.

**M 046 23
Defer
Action/
CU2325**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 30.76 ACRES MORE OR LESS”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU2327**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 DISTRICT TO ALLOW THE CONTINUED SALES AND STORAGE OF STONE, MULCH, SOIL, AND RELATED OUTDOOR PRODUCTS AT THE PROPERTY WITH THE EXISTING, NON-CONFORMING BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 50.90 ACRES, MORE OR LESS” (property lying on the southwest side of Plantations Road [Rt. 1D], approximately 0.18 mile southeast of Robinsonville Road [S.C.R. 277]) (911 Address: 33508 Ritter Lake Road, Lewes) (Tax Parcel: 334-12.00-7.00) filed on behalf of Howard L. Ritter & Sons, Inc.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Planning & Zoning Commission held a Public Hearing on the application on November 17, 2022. At the meeting of December 15, 2022, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to the 9 recommended conditions as outlined within the motion.

**Public
Hearing/
CU2327
(continued)**

The Council found that Mr. David Hutt, Esq. with Morris James, spoke on behalf of the Application; that also present were two of the principals of Howard L. Ritter & Sons, Inc., Mr. Ronnie Ritter and Ms. Susan Ritter and Mr. Mark Davidson with Pennoni; that the Conditional Use request is for the continued sale and storage of stone, mulch, soil and related outdoor products, which he would generally refer to as “landscape materials”; that the property is situated just off of Plantations Rd.; that there is a pre-existing, non-conforming borrow pit on the site; that historically the sale of landscaping material has been performed from the property; that the current Application is not requesting the use for concrete crushing, the grinding of trees and stumps, or the dying of products for the creation of mulch products; that at one time, those activities were part of the Application; that after careful consideration of the requested Application, the Ritters amended their Application, to remove the request to grind, shred or dye material; that concrete crushing is no longer requested; that there has been multiple cases of misinformation provided by flyers, radio statements, social media posts; that there have been statements made stating the property has a history with DNREC’s Environmental Crimes Unit; that the proof for these statements seemed to stem from a FIOA request filed with DNREC requesting a list of all prior complaints; that seven items were listed as prior complaints for the property; that the document provided listed received complaints; that the submitted complaints do not confirm that any environmental crime was committed or found on the property; that the submitted complaints do not confirm a Notice of Violation, charge or fine was issued to the property owner; that the Planning & Zoning Department would lodge a complaint, if the complaint was filed with the office properly; that a good example would be, if five of his neighbors filed a complaint on him or his property, the Planning & Zoning staff would document and process the complaint; that in filing the complaint, does not confirm a violation was found; that a submitted complaint would not confirm a history of zoning violations for his property; that it would confirm his property had a history of neighbors complaining; that the example of this, is the circumstance for the first five complaints submitted; that for the first five items listed, DNREC did not contact the property owner to issue any type of violation; that there was no charge assessed for Howard L. Ritter & Sons, Inc.; that the other two complaint items were for a permit check; that this was for a site visit, conducted by DNREC, by the neighbors request; that there were a few minor violations found and a permit which needed to be applied for; that all of these issues were promptly complied with by the Applicant; that these issues do not create a history with DNREC’s Environmental Crimes Unit; that the second example of misinformation is an allegation that Ms. Susan Ritter stated that an industrial discharge to Goslee Creek had occurred; that this allegation was not true; that it appears the allegation was based upon a reference to the Notice of Intent (NOI) Stormwater Discharge Application, which is an application Howard L. Ritter & Sons filed with DNREC as part of the required permitting process; that on the application there are multiple boxes for the applicant’s name, address, etc.; that one of the required boxes, request a response for “Discharges To:”; that the

**Public
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CU2327
(continued)**

response provided within that box was, two onsite ponds and Goslee Creek; that the provided response does not indicate there was an industrial discharge to Goslee Creek; that at no time did any of the Ritters state there was an industrial discharge to Goslee Creek; that the property in 1937 was primarily agricultural land; that in the 1940s the borrow pit operations began on the site; that by 1954, the borrow pit activities continued and the property continued to be surrounded by farmland; that by 1961, the borrow pit activities continued to increase; that the business for Howard L. Ritter & Sons began in 1975, where they leased the property; that the Ritters did not originally start the use of the borrow pit; that in 1975 the Ritters business included operating the borrow pit and the sale of items, such as stone and mulch, that were delivered to the site; that in 1989, development began along Plantations Rd.; that in 1997 you can see the Plantations community as it is coming along and the borrow pits are expanding; that by 2002 the surrounding area had experienced significant growth of residential housing which continued to increase up to present day; that the customers who have patronized the Ritters facility have included the State of Delaware, Sussex County, many municipalities located on the eastern side of the County, hundreds of local businesses and thousands of local residents and property owners within Sussex County; that the property totals a little over 50 acres; that two ponds have been excavated on the site as part of the borrow pit operations; that access to the site is from Ritter Lake Rd.; that Ritter Lake Rd. intersects with Plantations Rd.; that a Service Level Evaluation Request was filed with DelDOT; that the DelDOT response indicated the proposed use will have a diminutive impact, being it will generate less than 50 vehicle trips per day; that Plantations Rd. is within Phase 1 of DelDOT's planned improvements; that the property is zoned AR-1 (Agricultural Residential); that the properties located to the north, west and south are within the AR-1 Zoning District; that the properties to the east are located within MR (Medium-Density Residential); that there have been a number of Conditional Uses within the greater area; that two of those Conditional Uses are for the same use the Applicant is currently requesting; that over the past decade, Stockley Materials received two Conditional Uses for the same proposed use; that the 2045 Future Land Use Map, referenced in the 2019 Comprehensive Plan, reflects the property being within the Coastal Area; that the Coastal Area is one of the County's Growth Areas; that reflected on the 2020 State Strategies Map, the property is mostly within the Investment Level 2 area; that the location of the second pond, it located within the Investment Level 3 area; that the Level 2 areas are where the State anticipates growth in the near future; that the immediate neighbor to the east is a wastewater treatment facility, which was formally operated by Tidewater Environmental Services, Inc. (TESI); that now TESI is under ownership of Artesian; that immediately south of the wastewater treatment facility is a portion of the Plantations condominiums; that along the southern boundary of the site there is an agricultural area and wooded area, with single-family residences in that area; that along the western side of the property there is more agricultural land; that to the northwest side of the property there are two single-family residential communities, being

**Public
Hearing/
CU2327
(continued)**

Morning View and Maritima; that the property water service is provided by an onsite well; that sanity sewer service has been provided by porta johns for the history of the site; that the Sussex County Engineering Department has identified the property as being within the Tier II Service Area; that the Sussex County Engineering Department indicated there is capacity within the system to service the property, should the property owner wish to be annexed into the Sussex County Unified Sanitary Sewer System; that should County Council act favorably on the Application, the property will continue its present look, as the use has existed for decades; that storages bins are located at the end of Ritter Lake Rd.; that the storage bins are used for overflow and/or surplus for the primary components of the business; that at the rear of the site, there are additional storage bins which house different types of stone, mulch and other landscape materials; that there is a scale on the site, which is used to weigh materials; that all of the buildings would remain as the currently are; that the Plantation Condominiums are located approximately 300-ft away from the proposed use; that there is approximately 800-ft. between the business activities and the residential dwellings located to the southwest; that the communities of Morning View and Maritima, located to the north, are located 1,000-ft, away from the proposed activities and storage area; that Conditional Uses are defined as uses of a public or semi-public character, which require the exercise of planning judgement regarding location and site plan; that as part of the Commission's analysis, is to consider if the proposed use is desirable for the general convenience, orderly growth, prosperity and welfare of the County; that the historic use of the site, by thousands of consumers from government bodies to businesses and homeowners confirms the public or semi-public character of the uses; that the use is not uncommon, as it is performed by other businesses such as McCarthy Stone, The Rock Pile, Stockley Materials, LLC, and Mr. Mulch, which are located in various areas throughout Sussex County; that there were 42 letters of support received for this application; that is a remarkable and rare to have that number of letters of support received; hat one of the letters stated, that this is an economic engine for the community and should not be impeded, but helped to grow and prosper; that another letter stated that this is an integrable part of local business community here in Sussex County and has been for decades; that an email stated it is a local loyal business; that he believes actions speak louder than words; that when the neighbors protested the concrete crushing and the shredding and grinding of mulch, the Ritters revised their Application; that they made this revision despite being at that property, preforming the proposed use for decades, prior to those neighbors coming to the area; that the Ritters agreed to discontinue a very profitable part of their business; that there are not many businesses in Sussex County that process concrete; that the nearest place is located in the Town of Georgetown; that this means that there will be a lot of extra truck traffic; that the Ritter family requested the Council recommend approval of the Conditional Use with the conditions proposed, allowing the business to continue to provide the valuable services to all of the various consumers, of government agencies, local businesses or property owners within Sussex County.

**Public
Hearing/
CU2327
(continued)**

Public comments were heard.

Mr. Brook Freeman spoke in support of the application; that he is adjacent to the site; that he has lived there all of this life; that he has witnessed all of the changes and the development that has come; that by eliminating the crushing and griding of the concrete at this site is putting more traffic on the roads; that he would like to request an amendment so that the operation of the concrete work can continue; that the noise and dust has been kept down; that the Ritter family has a lot of money invested in equipment that they have had to push off to the side; that there are thousands of yards of concrete that needs to be grinded; that there is still farm land around; that they have been great people.

Mr. Schaeffer questioned if the Council had the ability to amend the application. Mr. Moore replied that it was advertised with very specifics in the short title. In that advertisement, it did not indicate concrete, therefore, it would need to be readvertised and have new hearings.

The Public Hearing and public record were closed.

**M 047 23
Adopt
Ordinance
No. 2901/
CU2327**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2901 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 DISTRICT TO ALLOW THE CONTINUED SALES AND STORAGE OF STONE, MULCH, SOIL, AND RELATED OUTDOOR PRODUCTS AT THE PROPERTY WITH THE EXISTING, NON-CONFORMING BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 50.90 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning and Zoning Commission as follows:

- 1. There is an existing legally non-conforming, or grandfathered, borrow pit in operation on this property. This use as a borrow pit has been in existence for decades and pre-dated the Sussex County Zoning Code. This application does not affect these borrow pit operations, which are allowed to continue.**
- 2. This Conditional Use is for the sales and storage of stone, mulch, soil, and other related outdoor materials. There was evidence in the record that this use has also been in existence for years, and that it is closely related to the borrow pit operations. The continued sales and storage of these materials is appropriate in this location where the borrow pit also operates.**
- 3. This use provides a needed location for those types of materials for Sussex County residents and businesses, and they are important to the economy of Sussex County.**
- 4. There was opposition to this application regarding noise and traffic. However, most of this opposition was directed at the borrow pit operations, and those operations existed long before any residential development occurred nearby, and they are not part of this**

**M 047 23
Adopt
Ordinance
No. 2901/
CU2327
(continued)**

application. There must be an expectation of the potential for noise, dust, and traffic when building or moving into a house near an active borrow pit. There was no compelling testimony that this Conditional Use for the storage and sales of stone, dirt, and mulch will create a significant increase in noise, dust, or traffic from their site.

5. This Conditional Use will not significantly increase the congestion of roads or streets in the area. DelDOT has stated that this use will only have a “diminutive” impact, which means that it will create less than 50 vehicle trips per day.
6. Because the borrow pit is a legal, pre-existing and non-conforming use under the Zoning Code, it is not appropriate to impose conditions on those activities on this site.
7. With appropriate Conditions of Approval, this use will not affect the nature of the area or neighboring properties.
8. This recommendation is subject to the following conditions:
 - a. This Conditional Use shall be limited to the storage and sale of mulch, stone, soil, and other related landscaping materials, in addition to the legally non-conforming, or grandfathered, borrow pit operations.
 - b. The location of the storage areas for stone, mulch, soil, and related materials shall be identified on the Final Site Plan and clearly marked on the site itself.
 - c. No manufacturing or industrial processes shall occur on the site. This prohibition includes the crushing, shredding, or grinding of any materials including specifically rock, stone, or concrete, and also includes the dyeing of mulch or similar materials.
 - d. One lighted sign not to exceed 32 square feet per side shall be permitted.
 - e. The hours of operation shall be from 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 1:00 p.m. on Saturdays. No receiving of materials before 8:00 a.m. shall be permitted.
 - f. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - g. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
 - h. All materials shall be stored in bins on a concrete or hot-mix base. All runoff from the bins shall be controlled so that it does not travel to neighboring or adjacent properties or adversely affect groundwater on the site.
 - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion Adopted: 5 Years

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 048 23
Adjourn**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn
at 2:45 p.m.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Tracy N. Torbert
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}